

State of Rhode Island and Providence Plantations
DEPARTMENT OF BUSINESS REGULATION
Division of Insurance
233 Richmond Street
Providence, RI 02903

NOTICE OF PROPOSED ADOPTION OF REGULATION, AMENDMENT TO
REGULATION AND PUBLIC HEARING

Notice is hereby given, in accordance with R.I. Gen. Laws §§ 42-14-17 and 42-35-3, that the Department of Business Regulation (“Department”) proposes to adopt and amend the following Regulations:

Insurance Regulation 42– Motor Vehicle Damage Appraisers

The regulation is designed to establish standards and procedures for the issuance of licenses and govern the conduct of licensees

Insurance Regulation 43 – Insurance Claims Adjusters

The proposed amendments are designed to establish standards and procedures for the issuance of licenses and govern the conduct of licensees.

Notice is also hereby given, in accordance with R.I. Gen. Laws § 42-35-3, that the Department of Business Regulation will hold a public hearing beginning at 10:00 a.m. on January 11, 2006 in the Main Hearing Room of the Department of Business Regulation, 233 Richmond Street, Providence, Rhode Island 02903, regarding the Proposed Adoption and Amendment.

Copies of the Proposed Regulation and the Proposed Amended Regulation are on file at the Department and copies may be obtained from the Legal Division, Department of Business Regulation, 233 Richmond Street, Providence, Rhode Island 02903 during normal working hours on regular business days or by mail upon request. The Proposed Regulation and the Proposed Amended Regulation may also be obtained from the Department’s website www.dbr.state.ri.us.

In the development of the Proposed Regulation and the Proposed Amended Regulation, consideration was given to overlapping approaches, overlap and duplication with other statutory and regulatory provisions and economic impact on small business and cities and towns.

All interested persons may submit their views, data or arguments regarding the Proposed Regulation and the Proposed Amended Regulation, including information relating to alternative approaches, duplication or overlap with other state rules or regulations and the economic impact of the Proposed Regulation and the Proposed

Amended Regulation on small business and/or cities and towns, orally at the public hearing or in writing, either by delivering the same in person or United States mail with postage pre-paid thereon to the Department of Business Regulation, 233 Richmond Street, Providence, Rhode Island 02903 attention Elizabeth Kelleher Dwyer, Hearing Officer or by e-mail to elizabeth_dwyer@dbr.state.ri.us

ALL WRITTEN SUBMISSION MUST BE RECEIVED NOT LATER THAN
JANUARY 11, 2006 AT 10:00 A.M.

The hearing room is accessible to the handicapped. Individuals requesting interpreter services for the hearing impaired must notify the Office of Legal Counsel at (401) 222 5400 or TDD 711 not less than ninety-six (96) hours in advance of the hearing date.

A. Michael Marques
Director, Department of Business Regulation

State of Rhode Island and Providence Plantations
DEPARTMENT OF BUSINESS REGULATION
Division of Insurance
233 Richmond Street
Providence, RI 02903

PROPOSED AMENDED
INSURANCE REGULATION 43

**~~INSURANCE AGENTS, SUB AGENTS, AGENTS FOR FRATERNAL
BENEFIT SOCIETIES, BROKERS, MOTOR VEHICLE DAMAGE
APPRAISERS, CLAIM ADJUSTERS AND SOLICITORS LICENSES~~**

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Section 1 **Authority**

~~In accordance with This Regulation is promulgated pursuant to R.I. Gen. Laws §§ 42-35-3 (a), 27-10-71 et seq. and 42-14-17., 27-3-48.1, and 27-10.1-1 (c), the following Regulation relating to the term of initial licensure and subsequent renewal of licenses of~~

~~insurance agents, sub-agents, agents for fraternal benefit societies, brokers, motor vehicle damage appraisers, claim adjusters and solicitors is hereby promulgated:~~

Section 2 Purpose and Applicability

~~This Regulation shall apply to insurance agents, sub-agents, agents for fraternal benefit societies, brokers, motor vehicle damage appraisers, claim adjusters and solicitors.~~

~~This Regulation shall not apply to such other persons as may in the future be exempted therefrom by the Insurance Commissioner.~~

~~Nothing in this Regulation is intended to abrogate or supersede statutory requirements relative to the categories of persons and/or entities delineated above all persons, partnerships, associations or corporations which engage for compensation in negotiating adjustments of insurance claims or who advertise, hold themselves out as or solicit the adjustment of insurance claims. This includes company adjusters, independent adjusters and public adjusters.~~

~~The purpose of this Regulation is to establish standards and procedures for the issuance of insurance claim adjuster licenses and to govern the conduct of insurance claim adjusters.:~~

Section 3 Term of Initial Licensure and Subsequent Renewal of Licenses ***Definitions***

A. Life Insurance Agents and Sub-Agents

~~Existing licenses for agents and sub-agents for life insurance companies shall remain in force until the first day of April, 1988, and shall be renewable thereafter on a tri-annual basis upon payment of the sum of fifteen (\$15.00) dollars in the aggregate to and for the use of the State. Initial licenses for agents and sub-agents for life insurance companies issued prior to the first day of April, 1988, shall remain in force until the first day of April, 1988, upon the payment of a pro rata share of the sum of ten (\$10.00) dollars in the aggregate to and for the use of the State, and shall be renewable thereafter on a tri-annual basis upon payment of the sum of fifteen (\$15.00) dollars in the aggregate to and for the use of the State. Initial licenses for agents and subagents for life insurance companies issued subsequent to the first day of April, 1988, shall remain in force until the next renewal date for then existing licenses upon the payment of a pro rata share of the sum of fifteen (\$15.00) dollars in the aggregate to and for the use of the State, and shall be renewable thereafter on a triannual basis upon the payment of the sum of fifteen (\$15.00) dollars in the aggregate to and for the use of the State.~~

~~B. Agents and Sub Agents for Fraternal Benefit Societies~~

~~Existing licenses for agents and sub agents for fraternal benefit societies shall remain in force until the 31st day of December, 1988, and shall be renewable thereafter on a tri-annual basis upon payment of the sum of fifteen (\$15.00) dollars in the aggregate to and for the use of the State. Initial licenses for agents and sub agents for fraternal benefit societies, issued prior to the 31st day of December, 1988, shall remain in force until the 31st day of December, 1988, upon the payment of a pro rata share of the sum of ten (\$10.00) dollars in the aggregate to and for the use of the State, and shall be renewable thereafter on a tri-annual basis upon payment of the sum of fifteen (\$15.00) dollars in the aggregate to and for the use of the State. Initial licenses for agents and sub agents for fraternal benefit societies, issued subsequent to the 31st day of December, 1988, shall remain in force until the next renewal date for then existing licenses upon the payment of a pro rata share of the sum of fifteen (\$15.00) dollars in the aggregate to and for the use of the State, and shall be renewable thereafter on a tri-annual basis upon the payment of the sum of fifteen (\$15.00) dollars in the aggregate to and for the use of the State.~~

~~C. Property, Casualty or Surety Agents and Sub Agents~~

~~Existing licenses for agents and sub agents for property, casualty or surety insurance companies shall remain in force until the first day of April, 1989, and shall be renewable thereafter on a tri-annual basis upon payment of the sum of fifteen (\$15.00) dollars in the aggregate to and for the use of the State. Initial licenses for agents and sub agents for property, casualty or surety insurance companies, issued prior to the first day of April, 1989, shall remain in force until the first day of April, 1989, upon the payment of a pro rata share of the sum of ten (\$10.00) dollars in the aggregate to and for the use of the State, and shall be renewable thereafter on a tri-annual basis upon payment of the sum of fifteen (\$15.00) dollars in the aggregate to and for the use of the State. Initial licenses for agents and sub agents for property, casualty or surety insurance companies, issued subsequent to the first day of April, 1989, shall remain in force until the next renewal date for then existing licenses upon the payment of a pro rata share of the sum of fifteen (\$15.00) dollars in the aggregate to and for the use of the State, and shall be renewable thereafter on a tri-annual basis upon the payment of the sum of fifteen (\$15.00) dollars in the aggregate to and for the use of the State.~~

~~D. Brokers~~

~~Existing licenses for brokers shall remain in force until the 30th day of June, 1988, and shall be renewable thereafter for one (1) year period(s), through and including the 30th day of June, 1990, upon the payment of the~~

~~sum of fifty (\$50.00) dollars per annum to and for the use of the State. Initial licenses for brokers issued prior to the 30th day of June, 1988, shall remain in force until the 30th day of June, 1988, upon the payment of the sum of fifty (\$50.00) dollars to and for the use of the State, and shall be renewable thereafter for one (1) year period(s), through and including the 30th day of June, 1990, upon the payment of the sum of fifty (\$50.00) dollars per annum to and for the use of the State. Initial licenses for brokers issued subsequent to the 30th day of June, 1988, but prior to the 30th day of June, 1989 shall remain in force until the 30th day of June, 1989, upon the payment of the sum of fifty (\$50.00) dollars to and for the use of the State, and shall be renewable thereafter through and including the 30th day of June, 1990, for a one (1) year period upon the payment of the sum of fifty (\$50.00) dollars to and for the use of the State. Initial licenses for brokers issued subsequent to the 30th day of June, 1989, but prior to the 30th day of June, 1990, shall remain in force until the 30th day of June, 1990, upon the payment of the sum of fifty (\$50.00) dollars to and for the use of the State. Effective the 30th day of June, 1990, existing licenses for brokers shall remain in force until the 30th day of June, 1990, and shall be renewable thereafter on a tri-annual basis upon the payment of the sum of one hundred fifty (\$150.00) dollars in the aggregate to and for the use of the State. Initial licenses for brokers, issued subsequent to the 30th day of June, 1990, shall remain in force until the next renewal date for then-existing licenses upon the payment of a pro rata share of the sum of one hundred fifty (\$150.00) dollars in the aggregate to and for the use of the State, and shall be renewable thereafter on a tri-annual basis upon the payment of the sum of one hundred fifty (\$150.00) dollars in the aggregate to and for the use of the State.~~

E.Claim Adjusters

~~Existing licenses for claim adjusters shall remain in force until the 31st day of August, 1988, and shall be renewable thereafter for one (1) year period(s), through and including the 31st day of August, 1990, upon the payment of the sum of fifty (\$50.00) dollars per annum to and for the use of the State. Initial licenses for claim adjusters issued prior to the 31st day of August, 1988, shall remain in force until the 31st day of August, 1988, upon the payment of the sum of fifty (\$50.00) dollars to and for the use of the State, and shall be renewable thereafter for one (1) year period(s), through and including the 31st day of August, 1990, upon the payment of the sum of fifty (\$50.00) dollars per annum to and for the use of the State. Initial licenses for claim adjusters issued subsequent to the 31st day of August, 1988, but prior to the 31st day of August, 1989, shall remain in force until the 31st day of August, 1989, upon the payment of the sum of fifty (\$50.00) dollars to and for the use of the State and shall be renewable thereafter through and including the 31st day of August, 1990, for a one (1) year period upon the payment of the sum of fifty (\$50.00) dollars to~~

and for the use of the State. Initial licenses for claim adjusters issued subsequent to the 31st day of August, 1989, but prior to the 31st day of August, 1990, shall remain in force until the 31st day of August, 1990, upon the payment of the sum of fifty (\$50.00) dollars to and for the use of the State. Effective the 31st day of August, 1990, existing licenses for claim adjusters shall remain in force until the 31st day of August, 1990, and shall be renewable thereafter on a tri-annual basis upon payment of the sum of one hundred fifty (\$150.00) dollars in the aggregate to and for the use of the State. Initial licenses for claim adjusters, issued subsequent to the 31st day of August, 1990, shall remain in force until the next renewal date for then-existing licenses upon the payment of a pro-rata share of the sum of one hundred fifty (\$150.00) dollars in the aggregate to and for the use of the State, and shall be renewable thereafter on a tri-annual basis upon the payment of the sum of one hundred fifty (\$150.00) dollars in the aggregate to and for the use of the State.

~~F. Motor Vehicle Damage Appraisers~~

Existing licenses for motor vehicle damage appraisers shall remain in force until the 31st day of August, 1988, and shall be renewable thereafter for one (1) year period(s), through and including the 31st day of August, 1990, upon the payment of the sum of fifty (\$50.00) dollars per annum to and for the use of the State. Initial licenses for motor vehicle damage appraisers issued prior to the 31st day of August, 1988, shall remain in force until the 31st day of August, 1988, upon the payment of the sum of fifty (\$50.00) dollars to and for the use of the State, and shall be renewable thereafter for one (1) year period(s), through and including the 31st day of August, 1990, upon the payment of the sum of fifty (\$50.00) dollars per annum to and for the use of the State. Initial licenses for motor vehicle damage appraisers issued subsequent to the 31st day of August, 1988, but prior to the 31st day of August, 1989, shall remain in force until the 31st day of August, 1989, upon the payment of the sum of fifty (\$50.00) dollars to and for the use of the State, and shall be renewable thereafter through and including the 31st day of August, 1990 for a one (1) year period upon the payment of the sum of fifty (\$50.00) dollars to and for the use of the State. Initial licenses for motor vehicle damage appraisers issued subsequent to the 31st day of August, 1989, but prior to the 31st day of August, 1990, shall remain in force until the 31st day of August, 1990, upon the payment of the sum of fifty (\$50.00) dollars to and for the use of the State. Effective the 31st day of August, 1990, existing licenses for motor vehicle damage appraisers shall remain in force until the 31st day of August, 1990, and shall be renewable thereafter on a tri-annual basis upon the payment of the sum of one hundred fifty (\$150.00) dollars in the aggregate to and for the use of the State. Initial licenses for motor vehicle damage appraisers, issued subsequent to the 31st day of August, 1990, shall remain in force until the next renewal date for then-existing licenses

~~upon the payment of a pro rata share of the sum of one hundred fifty (\$150.00) dollars in the aggregate to and for the use of the State, and shall be renewable thereafter on a tri-annual basis upon the payment of the sum of one hundred fifty (\$150.00) dollars in the aggregate to and for the use of the State.~~

G.Solicitors

~~Existing licenses for solicitors shall remain in force until the 31st day of August, 1988, and shall be renewable thereafter for one (1) year period(s), through and including the 31st day of August, 1990, upon the payment of the sum of ten (\$10.00) dollars per annum to and for the use of the State. Initial licenses for solicitors issued prior to the 31st day of August, 1988, shall remain in force until the 31st day of August, 1988, upon the payment of the sum of ten (\$10.00) dollars to and for the use of the State and shall be renewable thereafter, for one (1) year period(s), through and including the 31st day of August, 1990, upon the payment of the sum of ten (\$10.00) dollars per annum to and for the use of the State. Initial licenses for solicitors issued subsequent to the 31st day of August, 1988, but prior to the 31st day of August, 1989, shall remain in force until the 31st day of August, 1989, upon the payment of the sum of ten (\$10.00) dollars to and for the use of the State, and shall be renewable thereafter, through and including the 31st day of August, 1990, for a one (1) year period upon the payment of the sum of ten (\$10.00) dollars to and for the use of the State. Initial licenses for solicitors issued subsequent to the 31st day of August, 1989, but prior to the 31st day of August, 1990, shall remain in force until the 31st day of August, 1990, upon the payment of the sum of ten (\$10.00) dollars to and for the use of the State. Effective the 31st day of August, 1990, existing licenses for solicitors shall remain in force until the 31st day of August, 1990, and shall be renewable thereafter on a tri-annual basis upon the payment of the sum of thirty (\$30.00) dollars in the aggregate to and for the use of the State. Initial licenses for solicitors, issued subsequent to the 31st day of August, 1990, shall remain in force until the next renewal date for then-existing licenses upon the payment of a pro rata share of the sum of thirty (\$30.00) dollars in the aggregate to and for the use of the State, and shall be renewable thereafter on a tri-annual basis upon the payment of the sum of thirty (\$30.00) dollars in the aggregate to and for the use of the State.~~

As used in this Regulation:

- (A) "Aftermarket Part" means a motor vehicle body replacement part that is not an original equipment manufacturer part
- (B) "Applicant" shall mean a Person filing an application for a Rhode Island insurance claims adjuster license.

- (C) “Catastrophic disaster” according to the Federal Response Plan, means an event that results in large numbers of deaths or injuries; causes extensive damage or destruction of facilities that provide and sustain human needs; produces an overwhelming demand on state and local response resources and mechanisms; causes a severe long-term effect on general economic activity; and severely affects state, local and private sector capabilities to begin and sustain response activities. A catastrophic disaster shall be declared by the President of the United States or the Governor of the state or district in which the disaster occurred.
- (D) “Company adjuster” means an insurance adjuster who is an employee of an insurance company.
- (E) “Damaged Motor Vehicle Body Part” means any part of the body of a motor vehicle which is damaged as the result of a collision with another vehicle or object. Such parts shall include fenders, bumpers, windshields, hubcaps, head lamp and tail lamp assembly parts, glass and similar components of motor vehicle bodies as distinguished from the chassis, frame, seats, motor, transmission, air conditioning condenser, radiator, alloy wheels, and other accessories for propulsion and general running gear of motor vehicles.
- (F) “Director” means the Director of the Department of Business Regulation or his or her designee.
- (G) “Department” means the Department of Business Regulation and the Division of Insurance thereof.
- (H) “Emergency Adjuster” means a person who is authorized by the Department to perform adjusting activities in Rhode Island in the event of an emergency, catastrophe or state of disaster declared in Rhode Island pursuant to R.I.G.L. § 27-10-8.
- (I) “Home state” means the District of Columbia and any state or territory of the United States in which the adjuster maintains his or her principal place of residence or principal place of business is located. If neither the state in which the adjuster maintains the principal place of residence nor the state in which the adjuster maintains the principal place of business has a substantially similar law governing adjusters, the adjuster may declare another state in which it becomes licensed and acts as an adjuster to be the ‘home state.’
- (J) “Independent adjuster” means an insurance adjuster who is hired on a contract basis by an insurance company to represent the insurance company’s interest in the settlement of the claim.
- (K) “License” shall mean the insurance adjuster license issued by the Department to a Person engaged in the business of insurance claims adjusting.

- (L) "Licensee" shall mean a Person holding an Insurance Adjuster License.
- (M) "NAIC" shall mean the National Association of Insurance Commissioners.
- (N) "Original Equipment Manufacturer Part" or "OEM part" means a motor vehicle body replacement part manufactured by the manufacturer of the motor vehicle being repaired.
- (O) "Person" shall mean any individual, partnership, corporation, limited liability company, or any other legal entity, however formed.
- (P) "Public adjuster" means any person who, for compensation or any other thing of value on behalf of the insured:
- (1) Acts or aids, solely in relation to first party claims arising under insurance contracts that insure the real or personal property of the insured, on behalf of an insured in negotiating for, or effecting the settlement of, a claim for loss or damage covered by an insurance contract;
 - (2) Advertises for employment as an public adjuster of insurance claims or solicits business or represents himself or herself to the public as an public adjuster of first party insurance claims for losses or damages arising out of policies of insurance that insure real or personal property; or
 - (3) Directly or indirectly solicits business, investigates or adjusts losses, or advises an insured about first party claims for losses or damages arising out of policies of insurance that insure real or personal property for another person engaged in the business of adjusting losses or damages covered by an insurance policy, for the insured.
- (Q) "Resident" means a person who either resides in Rhode Island or maintains an office in Rhode Island where the business of producing insurance is transacted and designated Rhode Island as the residence ofr purposes of licensure.
- (R) "Uniform individual application" means the current version of the NAIC Uniform Individual Application for resident and nonresident individuals.
- (S) "Uniform business entity application" means the current version of the NAIC Uniform Business Entity Application for resident and nonresident business entities.

Section 4 License Required

- (A) A person, partnership, association or corporation shall not act or hold him/her or itself out as an adjuster in this state unless the person is licensed as an adjuster by the State of Rhode Island. An individual person who is associated with a

partnership, association or corporation must obtain both an individual license and a business entity license for the partnership, association or corporation. Application for an individual person shall be made using the Uniform Individual Application as modified and provided by the Department.

- (B) A business entity acting as an adjuster is required to obtain an adjuster license. Application shall be made using the Uniform Business Entity Application as modified and provided by the Department. Before approving the application, the department shall find that:
- (1) The business entity has paid the applicable fees; and
 - (2) The business entity has designated a licensed public adjuster responsible for the business entity's compliance with the insurance laws, rules and regulations of this state.
- (C) An insurance adjuster doing business under any name other than the adjusters' legal name is required to notify and obtain the consent of the Department prior to using the assumed name.
- (D) Each adjuster license is issued on a biennial basis. An adjuster who obtains a license during the license term shall be issued a license for the time period remaining and will have to renew at the expiration of the License, regardless of the period of time he, she or it has been licensed. The Department does not prorate license fees.
- (E) A license as an adjuster shall not be required of the following:
- (1) An attorney-at-law admitted to practice in this state, when acting in his or her professional capacity as an attorney;
 - (2) A person who negotiates or settles claims arising under a life or health insurance policy or an annuity contract;
 - (3) An insurance producer licensed by the Department, when the insurance producer adjusts, or assists in the adjustment of claims arising only under policies of insurance or fidelity or surety bonds negotiated, solicited, or effected by him or her or by the insurance producer, whether the insurance producer is a person, partnership, or corporation, for which he or she acts;
 - (4) Any employee or agent of a company, or an insurance producer licensed by the Department, who acts in the settlement of claims of two thousand five hundred dollars (\$2,500) or less, or
 - (5) A sole proprietor operating under an assumed name; however, the sole proprietor must hold an individual license and must obtain approval for the assumed name pursuant to section 4(c).

- (F) A licensed adjuster that is unable to comply with license renewal procedures due to military service or some other extenuating circumstance(e.g., a long-term medical disability) may request a waiver of those procedures. The adjuster may also request a waiver of any examination requirement, fine, or other sanction imposed for failure to comply with renewal procedures.
- (G) The Department may contract with non-governmental entities, including the NAIC or any affiliates or subsidiaries that the NAIC oversees, to perform any ministerial functions, including the collection of fees and data, related to licensing that the Department may deem appropriate.

Section 5 Emergency Licenses

- (A) Pursuant to R.I.G.L. § 27-10-8, the Director may permit an experienced adjuster to act as an adjuster in this state on homeowners' losses if the adjuster is either a licensed adjuster in another state which requires a license or regularly adjusts in another state where such licensing is not required and works for an insurance company authorized to do business in Rhode Island.
- (B) Those persons issued an emergency license may only engage in adjustment work during the period of emergency, as determined by the director.
- (C) A person issued an emergency license may only work either for an employer who is an adjuster licensed by this state, or for a regular employer of one or more adjusters licensed by this state, or for an insurance company authorized to do business in this state
- (D) In order to obtain an emergency adjuster license the employer or insurer shall furnish to the Department a notice in writing or electronically promptly after the beginning of any emergency insurance adjustment work.
- (E) Emergency licenses shall be for the time period specified by the Director and in no event more than one hundred twenty (120) days, unless extended by the Director.
- (F) Persons issued emergency license may only adjust:
- (1) Homeowner's losses.
 - (2) A single loss or losses arising out of an event or catastrophe common to all of those losses; or
 - (3) Adjustment of losses in any area declared to be a state of disaster by the governor of the state of Rhode Island or by the president of the United States under applicable federal law.

Section 6 Examination

- (A) An individual applying for an adjuster license shall pass a written examination unless exempt pursuant to Sections 5 and 7 of this Regulation. The examination shall test the knowledge of the individual concerning the duties and responsibilities of an adjuster and the insurance laws and regulations of this state.
- (B) The Department may make arrangements, including contracting with an outside testing service, for administering examinations and collecting the nonrefundable fee for said examinations.
- (C) An individual who fails to appear for the examination as scheduled or fails to pass the examination, shall register for another examination and is required to pay the fees and complete the necessary forms before being rescheduled for another examination.

Section 7 Exemptions from Examination

- (A) A person who applies for an adjuster license in this state who is currently licensed as an adjuster in a reciprocal state shall not be required to complete any examination, but shall be required to certify knowledge of Rhode Island law applicable to adjusters. This exemption is only available if the person is currently licensed in that reciprocal state and if the resident state issues a certification that, the applicant is in good standing in that resident state or the state's database records or those records maintained by the NAIC, its affiliates or subsidiaries, indicate that the adjuster is or was licensed in good standing.
- (B) A person that currently holds a nonresident adjuster license and moves to this state shall make application within ninety (90) days of establishing legal residence to become a resident adjuster. No examination shall be required of that person to obtain an adjusters license, but the adjuster shall be required to certify knowledge of Rhode Island law applicable to adjusters.
- (C) An adjuster who allows his, her or its license to expire may, within twelve (12) months from the due date of the renewal, reinstate this license without the necessity of passing a written examination. A penalty in the amount of an additional fee is required along with the unpaid renewal fee and shall be paid at the time of reinstatement. This exemption is only available if the application is received within twelve (12) months of the due date and the Applicant was in good standing in the state of residence or the state's database records or those records maintained by the NAIC at the time of renewal. The Applicant is required to file a renewal application, file the appropriate affidavit and pay all applicable fees.

Section 8 Conduct – All Adjusters

All adjusters must comply with the following:

- (A) Any licensee shall immediately notify the Department by any means acceptable to the Department if any action is taken by another state against his, her or its adjuster license in that state.
- (B) The licensee shall inform the Department by any means acceptable to the Department of a change of address, change of legal name, or change of information submitted on the application within thirty (30) days of the change.
- (C) A person shall not accept a commission, service fee or other valuable consideration for investigating or settling insurance claims in this state if that person is required to be licensed under R.I.G.L. §§ 27-10-1 *et seq.* and is not so licensed.
- (D) Records shall be maintained for at least five (5) years after the termination of the transaction and shall be open to examination by the Department at all times.
- (E) Every adjuster, upon receipt of any inquiry from the Department, shall within 21 calendar days of receipt of such inquiry, furnish the Department with a response to the inquiry in duplicate.

Section 9 Conduct – Company and Independent Adjusters

In addition to the requirements of Section 8 above, all Company and Independent Adjusters must also comply with the following:

- (A) An adjuster shall promptly inform an insured or claimant of his or her free choice in the selection of an auto body repair shop. Once the insured or claimant has advised the insurer that an auto body repair shop has been selected, the adjuster may not recommend that a different auto body repair shop be selected to repair the automobile.
- (B) No adjuster shall request or advise any motor vehicle owner or operator to operate his or her vehicle on any public thoroughfare for the purpose of obtaining a written estimate of damage at a drive-in claims center, unless it ascertained that the vehicle meets safety requirements as determined by the department of transportation. A vehicle is unsafe for driving under this section if the vehicle has (1) damage to its unitized body construction (2) damage to its hood catch which would probably result in an unexpected opening (3) damage to the front suspension (4) metal in contact with any tire (5) any door which can't be easily opened or which opens unexpectedly (6) inoperable tail lights (7) broken glass affixed to the vehicle or a cracked windshield or (8) any other condition deemed to be unsafe by the department of transportation pursuant to rules and regulations.
- (C) An adjuster adjusting a claim for motor vehicle physical damage shall notify the claimant in writing if he or she intends to specify the use of aftermarket parts. To

comply with this provision written notice may be provided on the original appraisal of the damaged vehicle.

(D) An adjuster shall not require the use of aftermarket parts when negotiating repairs of vehicles which are less than thirty (30) months beyond the date of manufacture, unless written consent from the vehicle owner to install aftermarket parts has been obtained.

(E) Whenever aftermarket parts are used for repairs to physically damaged motor vehicles, the following standards shall apply:

(1) The aftermarket parts shall be at least equal in kind and quality to the OEM parts in terms of fit, quality and performance;

(2) To the extent practical, an insurance company shall not require the use of multiple aftermarket parts distributors to provide parts for a single repair;

(3) Insurers specifying the use of aftermarket parts shall make allowances for the reasonable cost of any modifications to the aftermarket parts which may become necessary when making the repair, and for the cost of fitting, removing, and/or handling aftermarket parts which do not result in the vehicle being repaired to its condition prior to the loss;

(4) If the aftermarket part specified by the insurer does not result in the vehicle being repaired to its condition prior to the loss, the insurer shall then specify the use of an OEM part;

(5) The automobile body shop shall promptly notify the appraiser if the aftermarket part specified by the insurer does not result in the vehicle being repaired to its condition prior to the loss and permit the appraiser to reinspect the vehicle and make appropriate supplemental authorizations, if necessary;

(6) The automobile body shop shall provide documentation of aftermarket parts, which do not meet the requirements of this section, as reasonably requested by the insurer. The insurer shall be permitted to exercise any available rights of recovery against the aftermarket parts distributor.

(F) An adjuster shall not require that any insured use a particular rental car agency. In accordance with R.I.G.L. § 27-9.1-4(17) adjusters are not precluded from providing the name(s) of Rhode Island licensed rental car agencies with which arrangements have been made with respect to rental services.

(G) An adjuster shall not refuse to honor a 'direction to pay' executed by an insured to pay directly his or her motor vehicle replacement benefit, provided the rental agency is licensed in Rhode Island. In accordance with R.I.G.L. § 27-9.1-4(18)

the adjuster may question or challenge the amount charged in accordance with its policy.

- (H) Where applicable, adjusters shall comply with the requirements of R.I.G.L. § 31-46-1.1 regarding the classification of salvage vehicles.
- (I) Where applicable, adjusters shall comply with the provisions of the Child Support Interception Act pursuant to R.I.G.L. § 27-57-1 et seq.
- (J) A licensed adjuster is subject to all applicable statutes including but not limited to R.I.G.L. §§ 27-9.1-1 et seq. and 27-29-1 et seq and the regulations promulgated thereunder.
- (K) An insurance adjuster's duties include determining the amount of money that an insurance company will pay for a motor vehicle damage claim. While an insurance adjuster may rely upon the written appraisal in the settlement of the claim, an insurance adjuster cannot require an appraiser to either include or exclude damage on an appraisal provided however; the adjuster may provide the appraiser with information relating to damage unrelated to the incident or accident that occasioned the appraisal of the vehicle, or old damage, if the information to be provided by the adjuster is required to be included by the appraiser in the appraisal pursuant to R.I.G.L. § 27-10.1-6.

Section 10 Conduct - Public Adjusters

In addition to the requirements of Section 8 above, all Public Adjusters must also comply with the following:

- (A) A person acting as a public adjuster shall not misrepresent to a claimant that he or she is an adjuster representing an insurer in any capacity, including acting as an employee of the insurer or acting as an independent adjuster unless so appointed by an insurer in writing to act on the insurer's behalf for that specific claim or purpose. A public adjuster is prohibited from charging that specific claimant a fee when appointed by the insurer and the appointment is accepted by the adjuster.
- (B) No public adjuster shall split any commission, service fee or other valuable consideration for performing adjusting services to any person unless that person is required to be licensed under R.I.G.L. § 27-10-1 et seq..
- (C) In the event of a catastrophic disaster, there shall be limits on catastrophic fees. No public adjuster shall charge, agree to or accept as compensation or reimbursement any payment, commission, fee, or other thing of value equal to more than ten percent (10%) of any insurance settlement or proceeds. No public adjuster shall require, demand or accept any fee, retainer, compensation, deposit, or other thing of value, prior to settlement of a claim.

(D) Public adjusters shall ensure that all contracts for their services are in writing and contain the following terms:

- (1) Legible full name of the adjuster signing the contract, as specified in Department records;
- (2) Permanent home state business address and phone number;
- (3) Department license number;
- (4) Title of “Public Adjuster Contract”;
- (5) The insured’s full name, street address, insurance company name and policy number, if known or upon notification;
- (6) A description of the loss and its location, if applicable;
- (7) Description of services to be provided to the insured;
- (8) Signatures of the public adjuster and the insured;
- (9) Date contract was signed by the public adjuster and date the contract was signed by the insured;
- (10) Full salary, fee, commission, compensation or other considerations the public adjuster is to receive for services.
- (11) The contract may specify that the public adjuster shall be named as a co-payee on an insurer’s payment of a claim.
 - (a) If the compensation is based on a share of the insurance settlement, the exact percentage shall be specified.
 - (b) Initial expenses to be reimbursed to the public adjuster from the proceeds of the claim payment shall be specified by type, with dollar estimates set forth in the contract and with any additional expenses first approved by the insured.
 - (c) Compensation provisions in a public adjusting contract shall not be redacted in any copy of a contract provided to the Department upon request. Such a redaction shall constitute an omission of material fact.

(E) If the insurer, not later than seventy-two (72) hours after the date on which the loss is reported to the insurer, either pays or commits in writing to pay to the insured the policy limit of the insurance policy, the public adjuster shall:

- (1) Not receive a commission consisting of a percentage of the total amount paid by an insurer to resolve a claim;
 - (2) Inform the insured that loss recovery amount might not be increased by insurer; and
 - (3) Be entitled only to reasonable compensation from the insured for services provided by the public adjuster on behalf of the insured, based on the time spent on a claim and expenses incurred by the public adjuster, until the claim is paid or the insured receives a written commitment to pay from the insurer.
- (F) A public adjuster shall provide the insured a written disclosure concerning any direct or indirect financial interest that the public adjuster has with any other party who is involved in any aspect of the claim, other than the salary, fee, commission or other consideration established in the written contract with the insured, including but not limited to any ownership of, other than as a minority stockholder, or any compensation expected to be received from, any construction firm, salvage firm, building appraisal firm, motor vehicle repair shop, or any other firm which provides estimates for work, or that performs any work, in conjunction with damages caused by the insured loss on which the public adjuster is engaged. The word "firm" shall include any corporation, partnership, association, joint-stock company or person.
- (G) A public adjuster contract may not contain any contract term that:
 - (1) Allows the public adjuster's percentage fee to be collected when money is due from an insurance company, but not paid, or that allows a public adjuster to collect the entire fee from the first check issued by an insurance company, rather than as percentage of each check issued by an insurance company;
 - (2) Requires the insured to authorize an insurance company to issue a check only in the name of the public adjuster;
 - (3) Imposes collection costs or late fees; or
 - (4) Precludes any party from pursuing civil remedies.
- (H) Prior to the signing of the contract the public adjuster shall provide the insured with a separate disclosure document regarding the claim process that states:
 - (1) Property insurance policies obligate the insured to present a claim to his or her insurance company for consideration. There are three (3) types of adjusters that could be involved in that process. The definitions of the three types are as follows:

- (a) “Company adjuster” means the insurance adjusters who are employees of an insurance company. They represent the interest of the insurance company and are paid by the insurance company. They will not charge you a fee.
- (b) “Independent adjuster” means the insurance adjusters who are hired on a contract basis by an insurance company to represent the insurance company’s interest in the settlement of the claim. They are paid by your insurance company. They will not charge you a fee.
- (c) “Public adjuster” means the insurance adjusters who do not work for any insurance company. They work for the insured to assist in the preparation, presentation and settlement of the claim. The insured hires them by signing a contract agreeing to pay them a fee or commission based on a percentage of the settlement, or other method of compensation.
- (2) The insured is not required to hire a public adjuster to help the insured meet his or her obligations under the policy, but has the right to do so.
- (3) The insured has the right to initiate direct communications with the insured’s attorney, the insurer, the insurer’s adjuster, and the insurer’s attorney, or any other person regarding the settlement of the insured’s claim. Once a public adjuster has been retained, the company adjuster or other insurance representative may not communicate directly with the insured without the permission or consent of the public adjuster or the insured’s legal counsel.
- (4) The public adjuster is not a representative or employee of the insurer.
- (5) The salary, fee, commission or other consideration is the obligation of the insured, not the insurer.
- (I) The contract shall be executed in duplicate to provide an original contract to the public adjuster, and an original contract to the insured. The public adjuster’s original contract shall be available at all times for inspection without notice by the Department.
- (J) The public adjuster shall provide the insurer a notification letter, which has been signed by the insured, authorizing the public adjuster to represent the insured’s interest.
- (K) The insured has the right to rescind the contract within three (3) business days after the date the contract was signed. The rescission shall be in writing and

mailed or delivered to the public adjuster at the address in the contract within the three (3) business day period.

- (L) If the insured exercises the right to rescind the contract, anything of value given by the insured under the contract will be returned to the insured within fifteen (15) business days following the receipt by the public adjuster of the cancellation notice.
- (M) A public adjuster who receives, accepts or holds any funds on behalf of an insured, towards the settlement of a claim for loss or damage, shall deposit the funds in a non-interest bearing escrow or trust account in a financial institution that is insured by an agency of the federal government in the public adjuster's home state or where the loss occurred.
- (N) A public adjuster shall maintain a complete record of each transaction as a public adjuster. The records required by this section shall include the following:
- (1) Name of the insured;
 - (2) Date, location and amount of the loss;
 - (3) Copy of the contract between the public adjuster and insured;
 - (4) Name of the insurer, amount, expiration date and number of each policy carried with respect to the loss;
 - (5) Itemized statement of the insured's recoveries;
 - (6) Itemized statement of all compensation received by the public adjuster, from any source whatsoever, in connection with the loss;
 - (7) A register of all monies received, deposited, disbursed, or withdrawn in connection with a transaction with an insured, including fees transfers and disbursements from a trust account and all transactions concerning all interest bearing accounts;
 - (8) Name of public adjuster who executed the contract; and
 - (9) Name of the attorney representing the insured, if applicable, and the name of the claims representatives of the insurance company.
- (O) A public adjuster is obligated, under his or her license, to serve with objectivity and complete loyalty to the interest of his client alone; and to render to the insured such information, counsel and service, as within the knowledge, understanding and opinion in good faith of the licensee, as will best serve the insured's insurance claim needs and interest.

- (P) A public adjuster shall not solicit, or attempt to solicit, an insured during the progress of a loss-producing occurrence, as defined in the insured's insurance contract.
- (Q) A public adjuster shall not permit an unlicensed employee or representative of the public adjuster to conduct business for which a license is required.
- (R) A public adjuster shall not have a direct or indirect financial interest in any aspect of the claim, other than the salary, fee, commission or other consideration established in the written contract with the insured, unless full written disclosure has been made to the insured as set forth in Sections 10(F) and/or (U) of this Regulation.
- (S) A public adjuster shall not acquire any interest in salvage of property subject to the contract with the insured unless the public adjuster obtains written permission from the insured after settlement of the claim with the insurer as set forth in Sections 10(F) and/or (U) of this Regulation.
- (T) The public adjuster shall abstain from referring or directing the insured to obtain needed repairs or services in connection with a loss from any person, unless disclosed to the insured:
- (1) With whom the public adjuster has a financial interest; or
 - (2) From whom the public adjuster may receive direct or indirect compensation for the referral.
- (U) The public adjuster shall disclose to an insured if he or she has any interest or will be compensated by any construction firm, salvage firm, building appraisal firm, motor vehicle repair shop or any other firm that performs any work in conjunction with damages caused by the insured loss. The word "firm" shall include any corporation, partnership, association, joint-stock company or individual.
- (V) Any compensation or anything of value in connection with an insured's specific loss that will be received by a public adjuster shall be disclosed by the public adjuster to the insured in writing including the source and amount of any such compensation.
- (W) A public adjuster shall not enter into a contract or accept a power of attorney that vests in the public adjuster the effective authority to choose the persons who shall perform repair work.
- (X) A public adjuster shall ensure that all contracts for the public adjuster's services are in writing and set forth all terms and conditions of the engagement.

(Y) A public adjuster may not agree to any loss settlement without the insured's knowledge and consent.

Section 11 Ethical Requirements

- (A) An adjuster shall not undertake the adjustment of any claim if the adjuster is not competent and knowledgeable as to the terms and conditions of the insurance coverage, or which otherwise exceeds the adjuster's current expertise.
- (B) An adjuster shall not knowingly make any oral or written material misrepresentations or statements which are false or maliciously critical and intended to injure any person engaged in the business of insurance, to any insured client, or potential insured client.
- (C) No adjuster may represent or act as a public adjuster, company adjuster, or independent adjuster on the same claim.
- (D) The contract entered into by a public adjuster shall not be construed to prevent an insured from pursuing any civil remedy after the three-business day revocation or cancellation period.

Section 12 License Denial, Non-Renewal or Revocation

- (A) The Department may place on probation, suspend, revoke or refuse to issue or renew an adjuster's license or may levy a civil penalty in accordance with R.I.G.L. § 42-14-16 for any one or more of the following causes:
 - (1) Failing to respond to any inquiry from the Department within 21 calendar days of receipt of such inquiry.
 - (2) Providing incorrect, misleading, incomplete, or materially untrue information in the license application.
 - (3) Violating any insurance laws, or violating any regulation, subpoena, or order of the Department or of another state's insurance commissioner.
 - (4) Obtaining or attempting to obtain a license through misrepresentation or fraud.
 - (5) Improperly withholding, misappropriating, or converting any monies or properties received in the course of doing insurance business.
 - (6) Having been convicted of a felony.
 - (7) Having admitted or been found to have committed any insurance unfair trade practice or insurance fraud.
 - (8) Using fraudulent, coercive or dishonest practices; or demonstrating incompetence, untrustworthiness or financial irresponsibility in this state or elsewhere.

- (9) Having an insurance license, or its equivalent, denied, suspended, or revoked in any other state, province, district or territory.
- (10) Forging another's name to any document.
- (11) Cheating, including improperly using notes or any other reference material, to complete an examination for an insurance license.
- (12) Failing to comply with an administrative or court order imposing a child support obligation.
- (13) Failing to pay state income tax or comply with any administrative or court order directing payment of state income tax.
- (B) In the event that the action by the Department is to deny an application for or not renew a license, the Department shall notify the Applicant or licensee, in writing, of the reason for the non-renewal or denial of the license. The Applicant or licensee may make written demand upon the Department within ten days for a hearing before the Department to determine the reasonableness of the Department's action. The hearing shall be held pursuant to R.I.G.L. §§ 42-35-9 through 14.
- (C) The license of a business entity may be suspended, revoked or refused if the Department finds, after hearing, that an individual licensee's violation was known or should have been known by one or more of the partners, officers or managers acting on behalf of the business entity and the violation was neither reported to the Department nor corrective action taken.
- (D) In addition to or in lieu of any applicable denial, suspension or revocation of a license, a person may, after hearing, be subject to a fine and/or any other appropriate remedies according to R.I.G.L. § 42-14-16.
- (E) The Department shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by R.I.G.L. §§ 27-10-1 et seq., 42-14-16 and/or this Regulation against any person who is under investigation for or charged with a violation even if the person's license or registration has been surrendered or has lapsed by operation of law.

Section 13 Reporting of Actions

- (A) The adjuster shall report to the Department any administrative action taken against the adjuster in another jurisdiction or by another governmental agency in this state within thirty (30) days of the final disposition of the matter. This report shall include a copy of the order, consent to order, or other relevant legal documents.
- (B) Within thirty (30) days of the initial pretrial hearing date, the adjuster shall report to the Department any criminal prosecution of the adjuster taken in any

jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing, and any other relevant legal documents.

Section 14 Severability

If any provision of this Regulation or the application thereof to any person or circumstances is held invalid or unconstitutional, the invalidity or unconstitutionality shall not affect other provisions or applications of this Regulation which can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this Regulation are severable.

Section 15 Effective Date

This Regulation shall be effective twenty (20) days from the date of filing with the Secretary of State as indicated below.

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|-----------------|------------------------|
| EFFECTIVE DATE: | February 19, 1988 |
| AMENDED: | None |
| REFILED: | December 19, 2001 |
| <u>AMENDED:</u> | <u>February , 2006</u> |